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10/584,488	04/13/2007	Zhendong Wu	CCPT127661	6382

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EXAMINER
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MARCETICH, ADAM M

ART UNIT	PAPER NUMBER
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3761

NOTIFICATION DATE	DELIVERY MODE
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09/01/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

efiling@cojk.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/584,488	<b>Applicant(s)</b> WU, ZHENDONG	
	<b>Examiner</b> ADAM MARCETICH	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 23 July 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4,5 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4,5 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/23/2010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 5, 27 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Rowe; John P. et al. (US 5826600).

3. Regarding claim 1, Rowe discloses a wiper (col. 2, lines 27-29, Figs. 1-3, applicator assembly 10), comprising::

a rod having a first end and a second end (col. 2, lines 44-49, Figs. 1, 2, applicator 20);

a wiping body provided at the first end of the rod (col. 2, lines 44-49, Figs. 1, 2, applicator end-portion 24); and

an outer packing characterized in that said outer packing is a firm tube-like container made of thermoplastic materials having a first end and a second end (col. 2, lines 30-39, Figs. 1-3, casing 12 formed as cylinder of thermoplastic material with closed ends);

wherein both the first end and the second end of the tube-like container are closed permanently (Fig. 2, closed end of handle 14; col. 2, lines 60-64, Fig. 3, closed end surface 26);

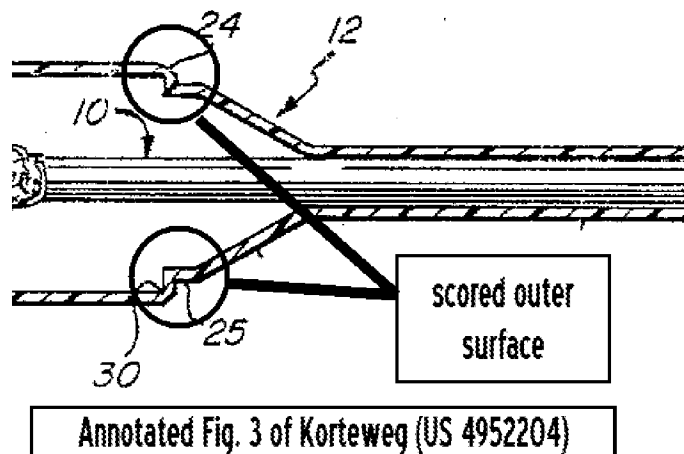
wherein the tube-like container is configured such that it can contain a substance selected from the group consisting of a working fluid, a working powder, and a working ointment (col. 2, lines 60-64, casing section 16 filled with mascara, interpreted as working fluid or ointment);

wherein the second end of the rod is fixedly coupled with a first portion of the tube-like container (col. 2, Fig. 2, handle 14 snugly secured to handle 22);

wherein the tube-like container has a circumferential easy break-off mark on an exterior surface of the tube-like container positioned, in the longitudinal direction, substantially in the middle of the tube-like container (col. 2, lines 39-44, Figs. 1, 2, frangible section 18 interpreted as located substantially in middle of casing 12);

wherein the easy break-off mark is scored on an outer surface of the tube-like container around the circumference of the tube-like container (col. 2, lines 39-44, Rowe incorporates Korteweg; Wayne US 4952204 by reference, which discloses at (cols. 3-4, lines 60-4 a narrow annular component 24 depicted as external scoring; see annotated Fig. 3 of Korteweg);

wherein the tube-like container is separable into the first portion and a second portion along the easy break-off mark (col. 2, lines 39-44, Figs. 1, 2, fracturing frangible section 18 to separate handle 14 and receiving section 16);



wherein the second end of the rod extends longitudinally from the first portion of the tube-like container to beyond the position of the easy break-off mark (Fig. 1, frangible section 18 depicted as between ends of applicator 20);

wherein the tube-like container is configured such that, when broken off along the easy break-off mark, the first portion of the tube-like container is separable from the second portion of the tube-like container to expose the wiping body for wiping (col. 2, lines 39-44, Figs. 1, 2, fracturing frangible section 18); and

wherein when the tube-like container is broken off along the easy break-off mark, a flexible deformation of the rod occurs under force without interfering with the breaking-off of the tube-like container and the rod is configured to recover from the flexible deformation after said force that makes it deform is removed (Fig. 4, depicting handle section 14 bending when breaking casing 12);

4. Regarding claims 4, 5, 27 and 30, Rowe discloses a wiper wherein:

said wiping body is impregnated with working fluid (col. 2, lines 60-64, casing section 16 containing end-portion 24 filled with mascara);

said wiping body provided at the first end of the rod is divided into two parts along the axial direction of the rod (col. 2, lines 44-49, Figs. 1, 2, series of flexible bristles 24'; regarding the limitation of a rod recovering from flexible deformation, Examiner interprets the description and illustration at col. 2, lines 44-49, Fig. 4, bending casing 12, as demonstrating that applicator 20 is at least flexible enough to recover when deformed);

the first and second ends of the tube-like container closed permanently through fusion (Korteweg col. 4, lines 34-40 fusion-molded container);

the tube-like container has walls of uniform thickness (Korteweg col. 2, lines 52-55, claim 6, uniform wall thickness of about 0.3 or 0.5 cm);

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rowe; John P. et al. (US 5826600) in view of Nakatani, Hiroshi (US 20030233063).

8. Regarding claim 28, Rowe discloses the invention substantially as claimed, but is silent whether applicator 20 and casing 12 are fixedly coupled through fusion as claimed. Instead, Rowe discloses only that handle 14 snugly surrounds casing 12 (col.

2, lines 54-60). Nakatani discloses a medical applicator (¶ [0003], [0010], [0029], Fig. 1, applicator 11), comprising:

a rod having a first end and a second end (¶ [0029], Fig. 1, shank 12);

a wiping body provided at the first end of the rod (¶ [0029], Fig. 1, application impregnated part 13); and

an outer packing container (¶ [0029], Fig. 1, gas impervious film 15);

wherein the second end of the rod is fixedly coupled with the first portion of the tube-like container (¶ [0049], Fig. 1, shank 12 adhered to internal surface of shank cover region 17).

Nakatani fixes a handle or gripping part of a container to an internal rod, to prevent the user from detaching them when applying a composition. One would be motivated to modify Rowe with the fixed coupling as taught by Nakatani to prevent a rod from detaching from a surrounding outer packaging since Rowe calls for securing these parts (col. 2, lines 54-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Rowe as discussed with the coupling as taught by Nakatani in order to join these parts together and keep a user's fingers clean.

This rejection is made in light of ***In re Thorpe***, 227 USPQ 964 (CAFC 1985) wherein product-by-process claims to a rod and tube-like container are rejected over applicator 20 and casing 12 of Rowe in view of the adhered shank 12 and shank cover region 17 of Nakatani which although may be prepared in a different manner, appears to be the same (prima facie) as the claimed product and performs the same function as

the claimed product does. That is, considering that Nakatani bonds, adheres or attaches shank 12 and shank cover region 17 together, the Examiner cannot distinguish between parts attached with adhesives versus fusion. Additionally, Rowe calls for a fusion bonding process as discussed for claim 27.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rowe; John P. et al. (US 5826600) in view of Gueret; Jean-Louis H. (US 6390708).

10. Regarding claim 29, Rowe discloses the invention substantially as claimed, but lacks first and second portions of a tube-like container with the same cross section as claimed. Gueret discloses an applicator for applying a product (col. 1, lines 5-18, col. 6, lines 16-27, Fig. 1, system 1), comprising:

a rod having a first end and a second end (col. 6, lines 28-32, Fig. 1, stem 5);

a wiping body provided at the first end of the rod (col. 6, lines 43-52, Fig. 1, application element 4 with bristles 9); and

an outer packing tube-like container having first and second portions (col. 6, lines 16-27, Fig. 1, reservoir 2 and cap 3);

wherein the first portion and the second portion of the tube-like container have the same uniform circular latitudinal cross section (col. 6, lines 16-27, Fig. 1, reservoir 2 and cap 3 having same cross section, joined at threads 22, 3b).

Gueret provides a more secure handle (col. 6, lines 25-27) having a larger gripping surface. One would be motivated to modify Rowe with the uniform cross sections as taught by Gueret to enhance a user's grip since Rowe calls for applying a



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force capable of breaking a frangible section (col. 2, lines 54-60) and manipulating a brush through a tightening orifice (col. 3, lines 23-35). Each step requires forcing components apart manually. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Rowe as discussed with the uniform cross sections as taught by Gueret in order to provide greater gripping force.

Rowe uses a reduced diameter portion at annular ring 30 to remove excess mascara (col. 3, lines 23-35). However, Rowe also suggests an alternative embodiment (col. 3, lines 56-64, partially-arcuately extending portion). This description is consistent with the wiping mechanism of Gueret which also achieves the same effect of removing excess mascara.

### ***Response to Arguments***

11. Applicant's arguments filed 23 July 2010 with respect to the rejection(s) of claim(s) 1, 4 and 5 under 35 USC § 102 over Rowe have been fully considered but are not persuasive. Therefore, the rejection is maintained. New claims 27-30 are reelected upon further consideration under 35 USC § 102 and 103 over Rowe, Nakatani and Gueret.

12. Applicant contends that Rowe does not teach the tube-like container recited in claim 1, since the claimed tube-like container comprises one contiguous tube-like body defined by a first portion and a second portion separated by an easy break-off mark,

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while outer casing 12 comprises sections 14, 16, 16', and 18. Examiner notes that the claims do not call for a contiguous or integral body, and that these sections are labeled or identified based on their function. Additionally, Rowe incorporates Korteweg by reference, which discloses a fusion-molded container (col. 4, lines 34-40).

13. Applicant submits that the outer wine-bottle shape of casing 12 distinguishes it from the claimed tube-like container. Examiner notes that claim 1 does not require a uniform cross section and that this limitation appears only in claim 29. Examiner finds that claim 29 is obvious over Rowe in view of Gueret in the new grounds of rejection.

14. Applicant contends that Rowe lacks a circumferential easy break-off mark scored on an outer surface of the tube-like container, since frangible section 18 of Rowe is instead a thinned section of the outer casing 12. Examiner notes that the specification does not specially define "scored," and therefore interprets the term broadly to include reduced-thickness sections extending from an external surface. Additionally, Korteweg depicts a frangible section as indented or sunken portion (see annotated Fig. 3 of Korteweg). Lastly, the specification offers another example of a break-off mark provided during injection molding (p. 22, lines 28-31).

15. Applicant contends that frangible casing 18 of Rowe is an entire section of the outer casing 12, instead of the claimed thin score. Examiner cites Korteweg as teaching a thin score, as depicted in annotated Fig. 3. To clarify, Examiner interprets the concave or sunken portion near element 24 as analogous to the claimed break-off mark.

***Conclusion***

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- ◆ Tsaur; Garry et al. US 20060020238
- ◆ Clements; Brenda US 4600328
- ◆ Rainey; Rhett K. US 4206843

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to:

Adam Marcetich

Tel 571-272-2590

Fax 571-273-2590

20. The Examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/

Examiner, Art Unit 3761

/Leslie R. Deak/

Primary Examiner, Art Unit 3761

26 August 2010